

REMARKS

Status of the Claims

Pending claims

Claims 18 and 41 to 79 are pending

Claims amended and added in the instant amendment

In the present response, claims 18, 41 to 60, 62 to 65, 67, 70 to 78 are amended and new claims 80 to 101 are added. Accordingly, after entry of the instant amendment, claims 18 and 41 to 101 will be pending and under examination.

Applicants respectfully request entry of the amendments set forth in this response under 37 CFR §1.116. The amendments place the case in condition for allowance and place the case in better condition for appeal; the amendments do not raise any issues of new matter; and the amended claims do not present new issues requiring further consideration or search.

Both before and after the above changes, and the addition of new claims, the invention was described in full, clear, concise, and exact terms and met all conditions for patentability under 35 USC 101 et seq. The scope of the claims of any resulting patent (and any and all limitations in any of said claims) shall not under any circumstances be limited to their literal terms, but are intended to embrace all equivalents.

The Restriction Requirement

The Patent Office alleged that the pending claims of the application are directed to ten separate and distinct inventions under 35 U.S.C. §121. Applicants elected Group IV, drawn to a method to produce animal feed, with traverse. In that response, Applicants gave reasons to reconsider and withdraw restriction requirement, and thus preserved their rights under 37 C.F.R. §1.144 by distinctly and specifically pointing out errors in the restriction requirement.

Support for the Claim Amendments

The specification sets forth an extensive description of the invention in the new and amended claims. Support for claims directed to phytases of the invention and nucleic acids of the invention encoding phytases, wherein the phytases have conservative substitutions of exemplary sequences, and conservative substitutions can be the replacements, one for another,

among the aliphatic amino acids Ala, Val, Leu and Ile; interchange of the hydroxyl residues Ser and Thr, exchange of the acidic residues Asp and Glu, substitution between the amide residues Asn and Gln, exchange of the basic residues Lys and Arg and replacements among the aromatic residues Phe, Tyr, can be found, inter alia, on page 28, line 29 to page 29, line 3. Support for claims directed to foodstuffs of the invention comprising a soybean, a corn or a sorghum can be found, inter alia, on page 73, line 18, to page 74, line 27. Accordingly, Applicants respectfully submit that no new matter is introduced by the instant amendments.

Information Disclosure Statement

Applicants thank the Examiner for expressly considering (and initialing) the submitted Information Disclosure Statements (IDSs) and Forms PTO-1449.

Issues regarding Double Patenting

Claims 18 and 41 to 79 are rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1 to 5, of U.S. Patent No. 6,183,740. An appropriate Terminal Disclaimer addressing this issue is attached.

Claims 18 and 41 to 79 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 13 of copending Application No. 09/777,566. An appropriate Terminal Disclaimer addressing this issue is attached.

Claims 18 and 41 to 79 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1 to 5 and 18 of copending Application No. 09/866,379. An appropriate Terminal Disclaimer addressing this issue is attached.

CONCLUSION

In view of the foregoing amendment and remarks, Applicants respectfully aver that the Examiner can properly withdraw the rejection of the pending claims under the judicially created doctrine of obviousness-type double patenting. Applicants respectfully submit that all claims pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

Applicant : Jay M. Short et al.
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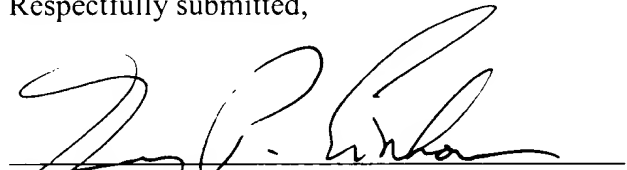
Applicants believe that no additional fees are necessitated by the present response and amendment. However, in the event any such fees are due, the Commissioner is hereby authorized to charge any such fees to Deposit Account No. 06-1050. Please credit any overpayment to this account.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at (858) 678-5070.

Respectfully submitted,

Date:

Aug. 25, 2003



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